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UNCLAS GUATEMALA 001191

SIPDIS

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HARARE FOR BRUCE WHARTON

E.O. 12958: N/A

TAGS: [PHUM](#) [PREL](#) [PGOV](#) [KJUS](#) [GT](#)

SUBJECT: ANOTHER LANDMARK TOPPLED: MACK CONVICTION  
OVERTURNED

REF: A. 02 GUATEMALA 2605

[1](#)B. GUATEMALA 1084

[1](#)1. (U) SUMMARY: On May 7, the Fourth Court of Appeals overturned the Third Sentencing Court's October 3, 2002 conviction of Colonel (ret.) Juan Valencia Osorio (Ref A). The Fourth Court of Appeals also found Helen Mack's appeal of the acquittal of General (ret.) Edgar Godoy Gaitan and Colonel (ret.) Juan Oliva Carerra invalid (Ref B). All three defendants were released immediately. The Ambassador attended the appeal and spoke with the press afterward (para 4). Helen Mack intends to appeal to the Supreme Court within the allotted 15 days. Our public statements on this are crafted to support the trial process without interfering. End Summary.

[1](#)2. (U) The Fourth Court of Appeals released their decision on the Mack case on May 7, to an overflowing courtroom filled with family members, human rights advocates, and pro-military observers. Outside the courtroom, ex-PACS were protesting and disgruntled would-be observers jostled for position. When the Ambassador arrived - a sign of the intense US interest in the case - he was verbally harassed by members of a tense and partisan crowd as he entered the courtroom.

[1](#)3. (U) The Fourth Court of Appeals decided that there was a contradiction in the Third Sentencing Court's October 3, 2002 decision. They said that the Third Court was erroneous in finding one defendant guilty for a crime that came out of a chain of command, even though Valencia Osorio admitted that he transmitted the order to assassinate Myrna Mack.

[1](#)4. (U) After the release of the decision, the Ambassador told the press: "We believe this case is of enormous importance for the Guatemalan system of jurisprudence. We of course respect the decision of the Guatemalan judiciary. At the same time, we find it extremely disappointing that, 13 years after such a barbarous crime, its intellectual authors remain free."

[1](#)5. (U) HROff spoke to Helen Mack shortly after the verdict. She said that she was horribly disappointed that the Guatemalan justice system had again failed her, and that she would appeal the Fourth Court's decision to the Supreme Court immediately. She and her team of lawyers have fifteen days to formulate their new appeal.

[1](#)6. (U) COMMENT: We are disappointed that yet another landmark conviction in a human rights case has been overturned by the Fourth Court of Appeals (the first being Gerardi, also in October 2002). We will remain vigilant in our efforts to protect Helen Mack and her team from threats, and to support justice for the killing of Myrna Mack.

[1](#)7. (U) COMMENT CONTINUED: We do not have yet an assessment on juridical grounds of the latest sentence. Nor do we know yet what the prospects are of overturning the Appeals Court verdict. We will pursue both questions with our contacts. The Embassy will also release a statement along the lines of the Ambassador's statements (para 4), and we encourage the Department to do likewise.

[1](#)8. (SBU) COMMENT CONTINUED: We continue to walk a fine line on this case: we support Helen Mack's quest for justice, but we do not want to be perceived as interfering in the judicial process, which would be counterproductive for the Mack case and our overall human rights objectives.  
HAMILTON